

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

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STATE OF OKLAHOMA, <i>et al.</i>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 4:05-cv-00329-GKF-PJC
	)	
TYSON FOODS, INC., <i>et al.</i>	)	
	)	
Defendants.	)	
	)	

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**DEFENDANTS’ JOINT MOTION FOR USE OF A JURY QUESTIONNAIRE  
AND INTEGRATED BRIEF IN SUPPORT**

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As discussed in *Defendants’ Joint Motion to Strike Jury Demand*, Dkt #2388, the remaining claims in this case are equitable in nature and therefore there is no right to a jury trial on those claims. *Id.* For reasons of efficiency, Defendants have moved the Court to strike the jury demand and proceed with a bench trial. *Id.* In light of the numerous rules and procedures that are uniquely applicable to juries, a jury proceeding will unnecessarily consume resources of the parties and the Court and will increase the risk of legal error.

However, if the Court were to utilize a jury in this case, Defendants respectfully submit that both standard and extraordinary precautions should be taken in jury selection. Plaintiffs allege that the citizens of the Northern District of Oklahoma are subject to various health risks as a result of Defendants’ conduct and that public resources have been and will be injured absent an injunction. These allegations make potential jurors interested parties in the litigation. In addition to this generally applicable problem, the impact of Plaintiffs’ allegations may vary among potential jurors based on their experiences and actions in the Illinois River Watershed. Defendants vigorously dispute Plaintiffs’ allegations, but fairness requires that this dispute be

decided by jurors who do not have a personal stake in the outcome of the case.

Moreover, this case has been subject to significant discussion and debate in the political arena and the press. This public debate creates a heightened risk that potential jurors will approach the case with pre-formed views or a selective picture of the issues and evidence.

Accordingly, Defendants respectfully request that the Court send potential jurors a written questionnaire in advance of voir dire. A proposed questionnaire is attached as Exhibit A. Defendants believe that having potential jurors complete a questionnaire will help the Court and the parties in empanelling a jury. Courts in Oklahoma regularly use jury questionnaires to provide information that will make the voir dire process more effective and efficient. *See In re Adoption of the 2007 Revisions to the Oklahoma Uniform Jury Instructions*, 163 P.3d 567, 57-72 (Okla. Ct. Crim. App., Mar. 27, 2007) (discussing the history of juror questionnaires and their advantages). Among other benefits,

juror questionnaires may enable the court and counsel to weed out jurors who could not serve in a case before voir dire begins, and thereby accelerate the process.... Juror questionnaires may also highlight particular areas ... for more focused inquiry during voir dire. The use of juror questionnaires provides jurors more time to think about their answers and provide more complete responses than voir dire. In addition, since jurors cannot hear the responses of other jurors when they are filling out questionnaires on their own, juror questionnaires can elicit the jurors' own opinions without the influence of the responses by other jurors. Jurors may also be more likely to reveal socially unacceptable attitudes....

*Id.* For these reasons, the American Bar Association has encouraged courts to utilize written juror questionnaires to foster a more informed and searching voir dire. *See id.*

Although the rules do not appear to require the parties to meet and confer on proposed jury questionnaires, Defendants conferred with Plaintiffs and learned that Plaintiffs agree a juror questionnaire should be utilized in this case. Defendants have submitted their proposed questionnaire to Plaintiffs, but have not yet received Plaintiffs' suggestions about its content. In

light of the upcoming trial date, Defendants submit their proposed questionnaire to the Court but will continue to confer with Plaintiffs about the questionnaire's content and report to the Court on any agreement that can be reached.

Respectfully submitted,

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